

**BEFORE THE WORKERS COMPENSATION APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JESUS BERUMEN

Claimant

V.

U.S.D. 233

Self-Insured Respondent

Docket No. 1,067,401

ORDER

Both parties request review of Administrative Law Judge William Belden's September 24, 2014 Order. Mark Kolich, of Lenexa, appeared for claimant. Kip Kubin, of Leawood, appeared for respondent.

ISSUES

This is a claim for an alleged February 22, 2013 accidental injury. Following a prehearing settlement conference, the judge ordered claimant to be evaluated by Vito J. Carabetta, M.D., pursuant to K.S.A. 2012 Supp. 44-516, for his opinions regarding, *inter alia*, prevailing factor, diagnosis, functional impairment and any preexisting impairment. The judge also ordered respondent to pay the costs of the examination and report.

Respondent requests the Order be vacated, arguing the judge exceeded his authority when he assessed the costs of the examination and report against respondent. Respondent contends no provision under K.S.A. 2012 Supp. 44-516, or any other part of the Kansas Workers Compensation Act, empowers the judge to order respondent to pay said costs.

Claimant requests the appeal be dismissed, arguing the Board lacks jurisdiction to review the Order under K.S.A. 2012 Supp. 44-551. Claimant also requests the Board assess costs, including reasonable attorney fees, against respondent for the time spent participating in this appeal.

PRINCIPLES OF LAW & ANALYSIS

The initial issue the Board will address in this case is whether the Board has jurisdiction to review the Order. After reviewing the record and considering the arguments, the Board concludes it does not have jurisdiction to review this particular Order.

The decision of the judge to have an independent medical examination performed on the claimant and to assess the costs of such examination to respondent is interlocutory in nature and made during the litigation of a workers compensation case before the judge. This is not a final order that can be reviewed pursuant to K.S.A. 2012 Supp. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute, K.S.A. 2012 Supp. 44-534a. The judge issued an interlocutory order for an independent medical evaluation, which is within his authority under K.S.A. 2012 Supp. 44-516.

The second issue the Board will address is whether claimant is entitled to costs from respondent for time spent participating in this appeal. The Board does not have jurisdiction to rule on issues not addressed by the judge.¹ The Board declines claimant's request for costs and attorney fees in advance of the judge ruling on the issue.

CONCLUSIONS

After reviewing the record compiled to date and considering the parties' arguments, the Board concludes: (1) the Board is without jurisdiction to entertain respondent's appeal of an interlocutory order; and (2) the Board is without jurisdiction to entertain claimant's appeal for costs and attorney fees because no order to this effect was ruled upon by the judge. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.

WHEREFORE, the Board dismisses both respondent's and claimant's appeals of the September 24, 2014 Order.

IT IS SO ORDERED.

Dated this _____ day of November, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

¹ See *Mezquita v. Tyson Fresh Meats, Inc.*, No. 1,042,398, 2013 WL 4779974 (Kan. WCAB Aug. 16, 2013).

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Honorable William G. Belden